IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 607 OF 2006
IN
CHAMBER SUMMONS NO. 1474 OF 2002
IN
SUIT NO. 756 OF 2003

Shailaja C. Shah & Anr. .. Appellants.

V/s.

Shri Subhash S. Runwal & Ors. ..Respondents.

Mr.Virag Tulzapurkar i/by M/s.Doijode & Associates for the Appellants.

Mr.Rohit Kapadia with Ms.Mohana Nair for the Respondent No.1.

Mr. A.D.Yadav for Respondent Nos.2 to 4.

Ms. Yogini Gada i/by M/s.Harakchand & Co. for the Respondent Nos.5 to 7.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 08th SEPTEMBER, 2006.

P.C.:

. Heard Mr. Virag Tulzapurkar, Senior Counsel for the Appellants.

2. In Appeal No.1068 of 2005, **Mr.Madhukar Venkatesh Ulla vs. M/s. Anita Hermy D'Souza & Ors.), decided on 23rd of January, 2006,** the Division Bench of this Court presided over by one of us (R.M.Lodha,J), held that the order of addition of a party is not a 'judgment' under

clause 15 of the Letters Patent. In paragraph 22 of the said Judgment the Division Bench held thus :-

> "22. In so far as an order of addition of parties is concerned, surely, it is not a final judgment. It is so because such order does not decide the questions or issues in controversy in the suit; it does not bring an end to suit or action. Such order is not preliminary judgment as well. By ordering addition of the party, the suit is not disposed of on a preliminary point. The debatable issue is whether the order of addition of party is interlocutory or intermediary judgment as categorised by the Supreme Court and hence appealable under clause 15 of Letters Patent. Our answer is in the negative. For one, such order does not possess the characteristics and trapping of finality in as much as it decides nothing and is only initiatory. The other it does not adversely affect a valuable right of the party directly nor decides an important aspect of the trial in an ancillary proceeding. Such order is only procedural in nature. Ultimately nature and effect of the order would be determinative in holding whether such order is 'judgment' within the meaning of clause 15 of the Letters Patent. Where trial Judge allows an impleadment of the party being either necessary or proper party, what is ordered is the participation of the party in the suit who has not been impleaded by the plaintiff initially. By impleadment of that party neither important aspect of the trial nor ancillary proceedings is decided. Such order even directly does not affect the valuable right of the plaintiff. Merely because the plaintiff has to fight the case against a party unwillingly or that it may to some extent widen the controversy in the suit, that would not mean that his valuable right is directly affected. We find ourselves in agreement with the well considered opinion of the Madras High Court that by addition of a party rights of the parties in any manner are not decided nor the proceedings are determined finally. Where the trial Judge allows any impleadment of the party in a given case at best some right of the plaintiff would

> be affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff has full right to contest the defence that would be set up by the added party and succeed in the suit. By such order, there is no determination of any right or liability nor does it take away substantial right of the plaintiff and, therefore, an order of addition of a party shall not fall within the meaning of the word 'judgment' under clause 15 of the Letters Patent. "

3. In view thereof, the present Appeal is not maintainable and is dismissed accordingly.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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